

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

UNITED STATES OF AMERICA,)	CASE NO: 6:17-CR-00025-KNM
)	
Plaintiff,)	CRIMINAL
)	
vs.)	Tyler, Texas
)	
HENRY PHILLIP JACKSON,)	Tuesday, September 12, 2017
)	
<u>Defendant.</u>)	(2:10 p.m. to 2:24 p.m.)

SENTENCING

BEFORE THE HONORABLE K. NICOLE MITCHELL,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: FRANK COAN, ESQ.
Assistant United States Attorney
110 N. College
Suite 700
Tyler, TX 75702

For Defendant: MICHAEL P. HEISKELL, ESQ.
Johnson Vaughn & Heiskell
5601 Bridge Street
Fort Worth, TX 76112

Deputy Clerk/ECRO: Lisa Hardwick

U.S. Probation: Keith Wallace

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1 Tyler, Texas; Tuesday, September 12, 2017; 2:10 p.m.

2 Call to Order

3 **THE CLERK:** The Court calls Criminal Action
4 6:17-cr-00025, *United States of America versus Henry Phillip*
5 *Jackson.*

6 **THE COURT:** Announcements?

7 **MR. COAN:** Your Honor, good afternoon. Frank Coan
8 for the United States. The Government is ready to proceed with
9 sentencing this afternoon.

10 **THE COURT:** Good afternoon.

11 **MR. HEISKELL:** Good afternoon, your Honor. Michael
12 Heiskell for Mr. Jackson. We're ready.

13 **THE COURT:** Good afternoon. All right. Mr. Jackson,
14 we're here today for sentencing. On May 16, 2017, you entered
15 a plea of guilty to Counts One through Four of an Information
16 charging you with willful failure to file income tax returns, a
17 Class A misdemeanor, in violation of Title 26 United States
18 Code Section 7203. Are you-all ready to proceed with
19 sentencing, Mr. Jackson?

20 **THE DEFENDANT:** Yes, your Honor.

21 **THE COURT:** All right. Mr. Coan, you're ready as
22 well?

23 **MR. COAN:** Yes, your Honor.

24 **THE COURT:** All right. The Court has received and
25 reviewed the final Presentence Investigation Report.

1 Mr. Jackson, have you received the final Presentence
2 Investigation Report and had time to review it?

3 **THE DEFENDANT:** Yes, your Honor.

4 **THE COURT:** Are there any errors of fact or omissions
5 in this final report?

6 **THE DEFENDANT:** Not that I recall, your Honor.

7 **THE COURT:** Okay. Does the Government have any
8 objections to the final presentence report?

9 **MR. COAN:** No, your Honor.

10 **THE COURT:** All right. Then I've considered the
11 Probation officer's report and I hereby adopt the presentence
12 report findings in this case in their entirety. Further, I
13 accept the plea agreement made in the case pursuant to Federal
14 Rule of Criminal Procedure 11(c)(1)(C).

15 Mr. Coan, are there any victims in the case that
16 would like to make a statement?

17 **MR. COAN:** No, your Honor.

18 **THE COURT:** Okay.

19 **MR. COAN:** Thank you.

20 **THE COURT:** Mr. Jackson, I've received and reviewed
21 the sentencing memorandum filed on your behalf as well as the
22 letters attached to that memorandum.

23 You have the right to address the Court before I
24 pronounce sentence. Do you wish to make a statement, or do you
25 wish to have your lawyer make a statement for you?

1 **MR. HEISKELL:** Your Honor, both of us would like to
2 briefly, but I would start out with Mr. Jackson.

3 **THE COURT:** All right. Mr. Jackson, you may proceed.

4 **THE DEFENDANT:** Thank you.

5 **THE COURT:** And if you'll just -- would you-all just
6 scoot that mike up to Mr. Jackson a little bit? Perfect.

7 **THE DEFENDANT:** Thank you, your Honor.

8 First, I'd like to thank the community and my family
9 for coming out today and supporting me. I want to tell them
10 that I apologize to them for the charges being brought in
11 reference to taxes and ask them to bear with me and pray for
12 me. And I appreciate you for coming out and I apologize for
13 putting you in this position at this time.

14 To the Court, I'd like to tell you that I accept the
15 responsibility that they have put there under the charges up
16 that -- that was an error that I need to correct and make sure
17 things go better. And I apologize to the Court and I will make
18 sure things are going right. And I will accept your sentence
19 in a positive way, your Honor.

20 **THE COURT:** Thank you, Mr. Jackson.

21 Mr. Heiskell, you may proceed.

22 **MR. HEISKELL:** Yes, your Honor. Thank you very much.
23 Your Honor, I -- you have read my sentencing memoranda. I did
24 receive on yesterday the Government's sentencing memoranda, and
25 I want to make a few comments about that.

1 In my memoranda, I point out Mr. Jackson's various
2 ailments and illnesses that he's suffered over the years
3 including his current diagnosis, not only for the matters the
4 Government referenced, the diabetes, the high blood pressure,
5 the cholesterol matters, but as he stands here today, he has
6 two gunshot wounds or two bullets in his body. He suffers from
7 coronary disease. He's had triple bypass surgery, prostate
8 cancer surgery. He's on a number of medications including one
9 that was just recently prescribed as of three weeks ago,
10 Pristaia (phonetic), for a anxiety depression as a result of
11 Probation having referenced him or referred him to a
12 psychiatrist.

13 So, he's had a number of mental and emotional issues
14 as a result of all these things that have happened within the
15 last year or more, and at his age of 65, I'd point out to the
16 Court that he has a very low chance of recidivism.

17 Now, we get to the agreed upon sentencing range. The
18 Government points out that because we did agree to the
19 restitution and the Court of course will address that more in-
20 depth. And Mr. Jackson has made the efforts and in fact has
21 paid full restitution, with the small amount of \$489 that I
22 just discovered this morning that we'll take care of today.

23 But be that as it may, he's made every effort to
24 compensate for his wrongs. He's made every effort from the
25 standpoint of accepting responsibility and being ready to

1 accept a sentence.

2 The Government's argument that well, he should not be
3 entitled to the three-month low range because of these things,
4 but on the other hand, the Government is saying well, he should
5 be entitled to the high range of six months which in this whole
6 scheme of things runs counter to their argument about the
7 three-month range.

8 Well, he's made those efforts. He has the mitigation
9 matters that I've often referenced not only in the report but
10 also today.

11 And I think in fairness to the community, to him
12 individually, that the three-month range is more than
13 sufficient to punish him for this matter. Had he been some
14 younger person with a background that shows not only a
15 continuing pattern, we do have those two small misdemeanors
16 from some years ago; they were both resolved on the same day.
17 But for that, his life has been an exemplary one from the
18 standpoint of his service to the community with his law
19 enforcement career, and as many services as a layperson in his
20 many capacities and the jobs as set forth in the sentencing
21 memoranda.

22 We're asking the Court not to impose any sentence
23 beyond that, Judge, for this additional reason. He'll be
24 sentenced to the -- whatever the Bureau of Prisons facility
25 they designate. That'll be some more expense, time, resource

1 in trying to deal with his many ailments. He needs to, we
2 would suggest, be returned as quickly as possible to his
3 doctors here so that he can continue his treatment in his
4 latter stages of his life with these many ailments.

5 So, we're asking the Court, your Honor, to look at
6 the low end here because we think not only do the facts justify
7 it, but that it is warranted based upon the unique -- unique
8 life he's lived and his status today from his mental and
9 physical health. And we're asking the Court to do that.

10 **THE COURT:** Thank you. Mr. Coan, would the
11 Government like to make a statement?

12 **MR. COAN:** Yes, your Honor, briefly.

13 **MR. HEISKELL:** And I'm sorry I didn't go to the
14 podium, Judge, as Mr. Coan is there.

15 **THE COURT:** I could hear you fine. That's all right.

16 **MR. HEISKELL:** All right. Thank you.

17 **MR. COAN:** Your Honor, this Court is familiar with
18 the case having presided over the plea hearing. This case
19 illustrates how no person is above the law, not even an
20 individual with 40 years of service as a law enforcement
21 official.

22 Mr. Jackson willfully failed to file tax returns from
23 2010 to 2013. He's admitted to doing so. He stands before the
24 Court and has accepted responsibility and has expressed his
25 readiness to accept the Court's sentence.

1 The parties worked together in this case to try to
2 craft a reasonable and just punishment as part of the plea
3 agreement. That included a range of imprisonment for three to
4 six months as well as full restitution to be paid prior to
5 today which Mr. Jackson has attempted to do and will -- will
6 comply with that term subsequent to today's hearing.

7 But as was pointed out in the Government's submission
8 to the Court and as referenced by Mr. Heiskell, the willingness
9 to make full restitution prior to today as well as the very
10 things highlighted in the Defendant's sentencing memo were
11 taken into consideration as part of the plea discussions.
12 Mr. Jackson's community service. Mr. Jackson's public service.
13 Mr. Jackson's family situation, his health conditions, and his
14 age. All those were taken into consideration as part of the
15 plea discussions.

16 And as the Court is aware, the guideline range in
17 this particular matter is 12 to 18 months. The parties'
18 agreement is significantly below that. So, he's already
19 looking at a below guideline sentence in this particular
20 matter.

21 And as the Court is aware, the totality of the
22 circumstances are to be considered in this particular
23 situation, and that goes beyond just the four years to which
24 Mr. Jackson has pled guilty.

25 As pointed out in the Presentence Investigation

1 Report, Mr. Jackson has not filed returns since 2004, and it
2 appears that returns have not been filed for tax years 2014 or
3 2015.

4 And so, on this record, the Government would ask that
5 the Court follow the recommendation of the Probation officer
6 and impose a sentence of six months imprisonment. Such a
7 sentence would serve the objectives of sentencing that is to
8 reflect the seriousness of the offense, to promote respect for
9 the law, to provide just punishment, and to afford adequate
10 deterrence.

11 Thank you, your Honor.

12 **THE COURT:** Thank you, Mr. Coan.

13 All right. I appreciate everyone's statements before
14 me today. Having reviewed the presentence report, and
15 accepting the 11(c)(1)(C) plea agreement, I impose the
16 following sentence.

17 Mr. Jackson, I sentence you to a term of six months
18 of imprisonment on each count to run concurrently, one year of
19 supervised release on each count to run concurrently, and
20 restitution in the amount of \$157,489, most if not all of which
21 I -- I know you've already paid, so that point is taken care
22 of; and then a special assessment of \$25 per count for a total
23 of \$100.

24 Mr. Heiskell, do you all have a request for a
25 particular BOP facility?

1 **MR. HEISKELL:** Your Honor, we do. We would request
2 Seagoville which is obviously close in proximity to the family.

3 **THE COURT:** To facilitate family visitation.

4 **MR. HEISKELL:** Yes, your Honor.

5 **THE COURT:** Okay.

6 **MR. HEISKELL:** And in addition, your Honor, if I may,
7 if this is the appropriate time, we would also request that
8 Mr. Jackson voluntarily surrender to that facility. He needs a
9 couple of more weeks to take care of some family business. In
10 addition, he has two grandchildren to be born next Monday.

11 **THE COURT:** Okay. I --

12 **MR. HEISKELL:** So, he wants to do that.

13 **THE COURT:** -- I was going to get to that at the end,
14 but I am going to allow that, Mr. Heiskell.

15 **MR. HEISKELL:** Yes.

16 **THE COURT:** And with regard to the Seagoville
17 designation, Mr. Jackson, I will make that recommendation. It
18 is ultimately of course up to the Bureau of Prisons on where
19 they place you, but hopefully my recommendation will carry some
20 weight.

21 There -- oh, interest is waived and there is no fine
22 imposed beyond this -- the restitution that we've already gone
23 over. Any restitution amount that remains unpaid when the
24 Defendant's supervision commences, I expect that will be none,
25 but just in case, is to be paid on a monthly basis of -- at a

1 rate of at least 10 percent of his gross income to be changed
2 during supervision if needed based on his changed circumstances
3 pursuant to 18 United States Code Section 3664(k).

4 If the Defendant receives an inheritance or
5 settlements, gifts, tax refunds, bonuses, lawsuit awards, any
6 other receipt of money, you must within five days of receipt
7 apply a hundred percent of the value of such resources to any
8 restitution still owed. Again, I don't anticipate you will owe
9 any restitution, but just in case.

10 Within 72 hours of release from the custody of the
11 Bureau of Prisons, after serving his term of imprisonment, the
12 Defendant shall report in person to the Probation office in the
13 district where he is released.

14 While on supervised release, the Defendant shall not
15 commit another federal, state, or local crime, and shall comply
16 with the standard conditions that have been adopted by this
17 Court.

18 In addition, the Defendant must comply with the
19 mandatory and special conditions that have been set forth in
20 the presentence report. The special conditions include that
21 the Defendant must pay the financial penalty imposed in the
22 judgment.

23 The Defendant must provide the Probation officer with
24 access to any requested financial information for purposes of
25 monitoring fine, restitution payments, and employment. The

1 Defendant must not incur any new credit charges or open any
2 lines of credit without the approval of the Probation officer
3 unless payment of any financial obligation ordered by the Court
4 has been paid in full. The Defendant must not participate in
5 any form of gambling unless payment of any financial obligation
6 ordered by the Court has been paid in full.

7 The Defendant must participate in any combination of
8 psychiatric, psychological, or mental health treatment programs
9 and follow the rules and regulations of that program until
10 discharged. This includes taking any mental health medication
11 as prescribed by a treating physician. The Probation officer
12 in consultation with the treatment provider will supervise your
13 participation in that program and the Defendant must pay any
14 costs associated with the treatment and testing.

15 We've already touched on this a little bit but,
16 Mr. Jackson, you have complied with the conditions of your
17 release, and so I will permit you to voluntarily surrender.

18 Mr. Jackson, you're hereby advised that even though
19 you've entered a plea of guilty, you have the right to appeal
20 the sentence imposed herein and you have the right to appeal in
21 forma pauperis under the Federal Rules of Civil Procedure.

22 Is there anything further from the Government?

23 **MR. COAN:** No, your Honor. Thank you.

24 **THE COURT:** Anything further from the Defendant?

25 **MR. HEISKELL:** No, your Honor. Thank you.

1 **THE COURT:** All right. Mr. Jackson, I previously set
2 a \$25,000 unsecured bond and conditions of release at the time
3 of your guilty plea. You will remain on those same bond and
4 conditions pending your Bureau of Prisons report date. Okay?

5 **THE DEFENDANT:** Yes, your Honor.

6 **THE COURT:** All right. Thank you.

7 **MR. HEISKELL:** Thank you.

8 **THE COURT:** We'll be adjourned.

9 **THE MARSHAL:** All rise.

10 **(This proceeding was adjourned at 2:24 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Toni Hudson", is written above a horizontal line.

Signed

January 4, 2018

Dated

TONI HUDSON, TRANSCRIBER